FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

Lower Berryessa Creek Program

This document presents Findings of Fact and a Statement of Overriding Considerations by the Board of Directors of the Santa Clara Valley Water District (Board) regarding the Final Environmental Impact Report (Final EIR) for the Lower Berryessa Creek Program, for which the Santa Clara Valley Water District (District) is acting as CEQA lead agency. The Findings and Statement presented herein were prepared in compliance with the California Environmental Quality Act (CEQA) and the State's CEQA Guidelines. Substantial evidence supporting all findings made herein is contained in the Environmental Impact Report (EIR) and/or the record of proceedings.

I. Background

The Lower Berryessa Creek Program (Program) would provide flood protection for residents, businesses, and infrastructure along Lower Berryessa, Calera, Tularcitos, and Lower Penitencia creeks in the City of Milpitas. The proposed Program would include construction of the following flood control improvements: raising creek levees, constructing floodwalls along existing creek levees, constructing an underground concrete box culvert, constructing a stormwater pump station, improving maintenance access, removal of sediment and vegetation, and floodplain construction.

Currently, Lower Berryessa, Calera, Tularcitos, and Lower Penitencia creeks cannot contain the 100 year flow with the appropriate freeboard requirements. According to the Project Study Report (PSR) (Winzler and Kelly, 2010), Lower Berryessa and Calera creeks flood approximately every four years. In the probable event of flooding, creek flows would exceed the levee banks and flood the surrounding areas. The extent of flooding would be dependent upon the rainfall but flood waters would likely result in the closure of streets and highways. Flooding would also result in damage to homes, schools, and businesses that are located within the flood zone. Emergency repairs would be required and would include removal of large amounts of sediment that would be deposited by floodflows, repair of levees, roadways, and other facilities that could become inundated during flooding.

II. Program Description

The Program would include the construction of flood-protection-related elements to be implemented on portions of the four creeks and would result in the containment of the channels’ design flow with adequate freeboard requirements. The Program is divided by geography and implementation sequence into six elements, each located in the City of Milpitas in Santa Clara County. One element would be located on Lower Berryessa Creek (Lower Berryessa Creek Element); three elements would be located on Calera Creek (Lower Calera Creek Element, Upper Calera Creek Element 1, and Upper Calera Creek Element 2); one element would be located on Tularcitos Creek (Tularcitos Creek Element); and one element would be located on Lower Penitencia Creek (Lower Penitencia Creek Element). The six elements are further divided into a total of 15 stream reaches, each of which poses conditions to be addressed on a reach-by-reach basis, i.e., with reach-specific solutions.

Some of the improvements include:

- Raising creek levees;
- Constructing floodwalls along existing creek levees;
- Constructing an underground concrete box culvert;
- Constructing a high-flow pump station;
- Improving maintenance access;
- Removal of sediment and vegetation to return to design capacity; and
- Floodplain construction.

The creek reaches to be included in the Program are all under the jurisdiction of the District.

III. Environmental Review Process and the EIR

The District submitted the NOP for the Program to the State Clearinghouse on September 27, 2007. One public scoping meeting was held on October 11, 2007, at City of Milpitas City Hall in the City Council Chambers. The meeting was publicized in local area newspapers and via direct mailings to approximately 3,700 households, offices, and agencies.

The District circulated the Draft EIR for a 48-day public and agency review period, beginning on June 28, 2011 and concluding on August 19, 2011. The Draft EIR and Notice of Completion were transmitted to the State Clearinghouse on June 28, 2011, and the Notice of Completion was filed with the Clerk of the County of Santa Clara on June 27, 2011. Bound hard copies of the Draft EIR were placed on reserve at several public venues, including the City of Milpitas main library. The Draft EIR was also made available in electronic format online, via the District’s website. Notice of the DEIR’s availability was mailed in hard copy to approximately 5,000 interested parties, including adjacent residents and other community members who had requested notification.

The Final EIR for the Program is on file in the District Library at 1020 Blossom Hill Road, San Jose, CA. It is also available online at: http://www.valleywater.org/services/LowerBerryessaCreekMeetingsAndNotices.aspx. The Final EIR consists of the following materials: copies of all comments on the Draft EIR received by the District; the District's responses to those comments; and the complete text of the EIR, including revisions made in response to comments received. The Final EIR and all associated materials in the administrative record are incorporated herein by this reference.

IV. Environmental Impacts and Findings of Fact

Pursuant to Public Resources Code § 21081 and CEQA Guidelines § 15091, a public agency may not approve or carry out a project for which an EIR has been certified which identifies one or more significant effects on the environment unless the public agency makes one or more of the following findings with respect to each significant impact:

(1) Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the final EIR.

The Board has made one or more of these specific written findings regarding each significant impact associated with the Program. Those findings are presented below. These findings are based on full appraisal of all viewpoints, including all comments received up to the date of adoption of these findings, concerning the environmental issues identified and discussed in the EIR.

The sections below are organized by the order each resource topic is presented in the EIR:

Chapter 3 Sections	
3.A Overview	3.I Hydrology and Water Quality
3.B Aesthetics	3.J Land Use and Planning
3.C Air Quality	3.K Noise
3.D Biological Resources	3.L Recreation
3.E Cultural Resources	3.M Transportation and Traffic
3.F Geology and Soils	3.N Utilities and Service Systems
3.G Greenhouse Gases	3.O Energy Conservation
3.H Hazards and Hazardous Materials	(References included under each section)

Alternatives are discussed in Chapter 4 of the EIR and cumulative impacts are discussed in Chapter 5 of the EIR.

1. Significant Impacts that Can Be Mitigated to a Less than Significant Level

Aesthetics

3.B-1: Damage to scenic resources, including trees, of the built or natural environment that contribute to a scenic public setting. [Lower Berryessa Creek Element and Lower Penitencia Creek Element]

Impact

Construction would require removal of visually significant vegetation and tree removal along creek levels currently providing natural and scenic quality to views. This impact would occur on the Lower Berryessa Creek Element and the Lower Penitencia Creek Element. Construction along all other elements would not result in impacts to scenic resources because they would not include significant vegetation removal or are not in the vicinity of a scenic collector road or designated scenic resources.

Mitigation

Implementation of *Mitigation Measure 3.D-6a—Tree and Shrub Replacement* would reduce impacts on scenic resources to less-than-significant levels by substantially restoring the visual resources of the pedestrian paths along Lower Berryessa Creek and Lower Penitencia Creek.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-6a is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts related to damage to scenic resources would be less than significant.

3.B-2: Temporary or permanent impacts on the existing visual character or quality of the site and its surroundings. [Lower Berryessa Creek Element, Lower Penitencia Creek Element, Tularcitos Creek Element]

Impact

Along the Lower Berryessa Creek Element, impacts to visual quality would primarily result from floodwalls installation, levees heightening, as well as tree and vegetation removal. Along the Tularcitos Creek Element, impacts to visual quality would primarily result from installation of the pump station just upstream of Paso Refugio Court. Impacts to visual quality along the Lower Penitencia Creek Element primarily would be due to vegetation and tree removal within visually sensitive areas of the Lower Penitencia Creek Trail. The permanent visuals changes at the Lower Berryessa, Lower Penitencia and Tularcitos Creek Elements would be a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.D-6a—Tree and Shrub Replacement* and *Mitigation Measure 3.B-2—Aesthetically Compatible Design* would reduce the Program impacts on visual character to a less-than-significant level by ensuring that the visual character of the area would be restored through tree replacement and that the pump station would not contrast substantially with the existing character of the neighborhood.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-6a and Mitigation Measure 3.B-2 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts related to impacts on visual character would be less than significant.

3.B-3: Adverse effects on daytime or nighttime views due to new sources of substantial light or glare. [Tularcitos Creek Element]

Impacts

It is unknown whether the pump station at the confluence of Tularcitos and Lower Berryessa Creek would include nighttime security lighting. It is likely that if nighttime lighting were to be required for the pump station, the resulting glare could be noticed by several residences on the east side of the Tularcitos Creek Element and result in a distraction or nuisance for the residences. If the light sources were not adequately placed or designed, the pump station could result in a significant impact on nighttime views. If reflective building materials are used as part of the pump station design, daytime glare could also occur, and could be distracting to motorists, recreationalists at Peter T. Gill Memorial Park, or residences with foreground views of the pump station. This effect would be a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.B-2—Aesthetically Compatible Design* and *Mitigation Measure 3.B-3—Placement* and *Design of Nighttime Security Lighting* would adequately reduce the impact to a less-than-significant level by ensuring that the pump station would prohibit reflective finishes and that nighttime lighting would be shielded from nearby residences.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.B-2 and Mitigation Measure 3.B-3 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts related to substantial light or glare would be less than significant.

Air Quality

3.C-1: Generation of fugitive inhalable particulate matter that could result in the violation of an air quality standard or contribute substantially to an existing or projected air quality violation. [All Elements]

Impact

Construction of all program elements would require earth disturbing activities that would lead to fugitive dust emissions of PM_{10} and $PM_{2.5}$. Fugitive dust emissions associated with the construction activities could contribute to the non-attainment status for particulate matter. This would be a significant impact.

Mitigation

During construction of all elements, *Mitigation Measure 3.C-1—Dust Control Measures* would require the District and/or its contractor(s) to implement basic dust control measures. For elements where construction emissions exceed one or more of the applicable BAAQMD thresholds, additional measures such as watering the construction site and erosion control would be implemented. These dust control measures would reduce impact to less than significant.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.C-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts resulting from generation of particulate matter would be less than significant.

3.C-2: Generation of criteria pollutants associated with equipment exhaust that could result in the violation of an air quality standard or contribute substantially to an existing or projected air quality violation. [Tularcitos Creek Element]

Impact

The currently proposed diesel powered pumps would constitute a new source of emissions and hence would be subject to the requirements of BAAQMD Rules and Regulations. The required compliance with BAAQMD Rules and Regulations would minimize the air quality impact associated with emissions from the pump station; however, because the design of this program element has not been finalized, the EIR analysis assumes that diesel driven pumps would be used and impacts associated with equipment exhaust resulting in the violation of an air quality standard or contributing substantially to an existing or projected air quality violation could occur and would thus be significant.

Mitigation

Implementation of *Mitigation Measure 3.C-2c—Air Pollutant Emissions Plan* would result in development of an air pollutant emissions plan prior to implementation of the Tularcitos Creek Element. The air pollutant emissions plan would ensure that emission controls are incorporated into the pump design (if required) in order to reduce pollutant emissions to a less-than-significant level. Therefore, for the purposes of this program-level analysis, pump station impacts and the impact associated with equipment exhaust would not result in the violation of an air quality standard or contribute substantially to an existing or projected air quality violation and would be less than significant after mitigation.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.C-2c is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts related to generation of criteria pollutants associated with equipment exhaust would be less than significant.

3.C-3: Cumulatively considerable increases in criteria pollutant emissions for which the area is in non-attainment of standards during program operations [Tularcitos Creek Element]

Impact

As discussed in Impact 3.C-2, impacts associated with emissions from the Tularcitos Creek Element pump station would contribute substantially to an existing or projected air quality violation and would thus result in a significant cumulative impact

Mitigation

As discussed in Impact 3.C-2, implementation of *Mitigation Measure 3.C-2c—Air Pollutant Emissions Plan* would result in development of an air pollutant emissions plan prior to implementation of the Tularcitos Creek Element. The air pollutant emissions plan would ensure that emission controls are incorporated into the pump design (if required) in order to reduce pollutant emissions to a less-than-significant level. Program operations, with implementation of Mitigation Measure 3.C-2c, would therefore not result in a cumulatively considerable increase in criteria pollutant emissions for which the Basin is designated non-attainment.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation

Measure 3.C-2c is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts related to cumulative generation of criteria pollutants associated with equipment exhaust would be less than significant.

3.C-5: Expose sensitive receptors to objectionable odors. [Tularcitos Creek Element]

Impacts

There are a large number of sensitive receptors surrounding all project- and program-level elements. Operation of the proposed pump station on the Tularcitos Creek Element could result in odorous emissions from the diesel-driven pumps. Odors from diesel combustion at the pump station would have the potential to expose nearby residents to odors associated with diesel exhaust. The use of diesel-driven pumps, during periods when the water level in Berryessa Creek is high enough to prevent flows from Tularcitos Creek by gravity, could expose sensitive receptors to objectionable odors and would result in a significant impact.

Mitigation

Prior to construction and operation of the Tularcitos Creek Element, the District would implement *Mitigation Measure 3.C-2c—Air Pollutant Emissions Plan.* This measure requires that the District conduct a detailed analysis of the air pollutant emissions from the Tularcitos pump station. Emissions shall be quantified and health risk to receptors in the vicinity shall be assessed based on the proposed operations assumptions. If the review indicates that air pollutant emissions would exceed significance thresholds, feasible measures shall be implemented to reduce the pump station emissions to a level that does not exceed BAAQMD significance thresholds. Such measures may include, but not limited to requiring the diesel-powered pumps to comply with CARB Tier 2 or Tier 3 standards, or operating the pump using electricity rather than diesel-powered pumps.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.C-2c is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts related to exposure of sensitive receptors to objectionable odors would be less than significant.

Biological Resources

3.D-3: Adverse effects on San Francisco dusky-footed woodrat habitat. [Upper Calera Creek Elements 1 and 2]

Impact

Within the Upper Calera Creek Elements 1 and 2 vegetation removal, grading, and excavation within San Francisco dusky-footed woodrat habitat could cause destruction of nests and injury or mortality to individual woodrats. These impacts would be significant.

Mitigation

Prior to construction, the District would implement *Mitigation Measure 3.D-3—Protection of San Francisco Dusky-footed Woodrat.* This measure required that the District ensure that a qualified biologist conducts a survey for woodrat middens (i.e., nests, houses) within all limits of construction, along Upper Calera Creek Element 1 and Upper Calera Creek Element 2, no more than two to four weeks before the initiation of clearing or grading in accordance with *Mitigation Measure 3.D-3—Protection of San Francisco Dusky-footed Woodrat.* If middens are found, the District shall avoid or minimize impacts on woodrat and its habitat and coordinate with CDFG to ensure that any avoidance measures implemented are appropriate and adequate to protect this species.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-3 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts on San Francisco dusky-footed woodrat habitat would be less than significant.

3.D-4: Adverse effects on federal- or state-protected wetlands and waters including riparian or other sensitive natural communities. [All Elements]

Impacts

Implementation of the Program could affect jurisdictional wetlands and waters that are located within the stream reaches, both temporarily and permanently. Prior to the start of construction, the District would obtain the applicable permits and authorization from the Corps, the SFBRWQCB, and a CDFG Lake and Streambed Alteration Agreement. Further, implementation of Districts BMPs would reduce and avoid indirect and temporary impacts on wetlands, riparian, and aquatic habitats.

However, the project-level and program-level elements could result in loss of jurisdictional wetlands and waters during construction of the improvements within Lower Berryessa, Calera, Tularcitos, and Lower Penitencia creeks, which is a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.D-4a—Wetland and Riparian Habitat Avoidance and Minimization (Program-level Elements)* and *Mitigation Measure 3.D-4b—Compensate for Loss* would mitigate effects to wetland and waters along the program-level elements. These measures require that the District conduct a jurisdictional determination to determine the location and extent of wetlands within Lower Penitencia Creek Element and develop final design such that effects on wetland, riparian habitat and other waters would be minimized in accordance with *Mitigation Measure 3.D-4a—Wetland and Riparian Habitat Avoidance and Minimization (Program-level Elements)*. The District shall also obtain permits and authorizations from the Corps, SFBRWQCB, and CDFG. Consistent with the terms and conditions of these permits and authorizations, the District shall compensate for the unavoidable loss of wetlands and other waters and riparian habitats at a minimum of a 1:1 ratio as stated in *Mitigation Measure 3.D-4b—Compensate for Loss.* A mitigation and monitoring plan (MMP) shall be developed that describes how temporary and permanent impacts shall be compensated for and shall present monitoring protocols to ensure the Program does not result in a net loss of wetlands.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-4a and Mitigation Measure 3.D-4b are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts related to adverse effects on wetlands and waters would be less than significant.

3.D-6: Conflict with local policies or ordinances protecting biological resources, including tree preservation policies or ordinances. [All Elements]

Impacts

Construction of the Program could require the removal of vegetation, including trees that are protected under ordinances from the City of Milpitas within the District's right-of-way (ROW) in order to construct the raised levees, install the floodwalls, and construct the pump station. In particular, a number of trees located along Lower Berryessa Creek, Upper Calera Creek, and Lower Penitencia Creek would be removed. Because some trees under the jurisdiction of local tree protection ordinance could be removed, impacts related to conflicts with local policies or ordinances protecting biological resources would be significant.

Mitigation

Prior to the start of construction, the District would implement *Mitigation Measure 3.D-6a—Tree and Shrub Replacement.* This measure requires that the District have a qualified biologist conduct a survey to identify the trees and shrubs that would be removed during construction. The District shall prepare both a tree replacement plan in accordance with *Mitigation Measure 3.D-6a—Tree and Shrub Replacement* and a tree protection plan in accordance with *Mitigation*

Measure 3.D-6b—Tree Protection Measures. Where planting trees and shrubs within the same site, or within the District's ROW, is not feasible, the District shall coordinate with the City of Milpitas to find suitable, alternative location(s) for the replacement plantings. The District shall monitor tree replacement plantings annually for a minimum of three years after completion of construction. A tree protection plan would be implemented for trees that would remain within the program area but would be within or adjacent to the active construction areas.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-6a and Mitigation Measure 3.D-6b are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts related to conflict with local policies or ordinances protecting biological resources would be less than significant.

Cultural Resources

3.E-1: Impacts on unknown historical resources, archaeological resources, and/or human remains. [Upper Calera Creek Element 1, Upper Calera Creek Element 2, Lower Penitencia Creek Element, Tularcitos Creek Element]

Impacts

No known cultural resources, including historical resources, archaeological resources, and/or human remains, are located in the APE for the any of the program elements. However, the accidental discovery of cultural resources during construction cannot be entirely discounted. Additionally, because the site design and boundary for program-level elements has not been finalized, there is also potential for cultural resources and human remains to be present if areas are added to the boundary of the element that were not evaluated for this program-level analysis. Implementation of the District’s BMPs CU-2: Stop Work and Report Archaeological Finds and CU-3: Stop Work and Report Burial Finds related to cultural resources would minimize potential for impacts on unknown resources.

Mitigation

In conjunction with future project-specific environmental review, the District would implement *Mitigation Measure 3.E-1—Cultural Resources Survey and Impact Assessment for Program-level Elements*. This measure requires that the District conduct pre-construction cultural resources surveys for the Lower Penitencia Creek Element and for any other program-level element whose APE boundaries expand beyond those used in this EIR. In accordance with *Mitigation Measure 3.E-1—Cultural Resources Survey and Impact Assessment for Program-level Elements*, the survey shall be conducted by a qualified professional who meets the Secretary of the Interior’s Professional Qualification Standards (36 CFR 61). If cultural resources are discovered during a pre-construction survey, *Mitigation Measure 3.E-2* shall be applied as appropriate.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.E-1, and Mitigation Measure 3.E-2, as discussed below, are feasible and will adopt them as described in the EIR. Mitigation Measure 3.E-1 will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts on unknown historical resources, archaeological resources, and/or human remains would be less than significant.

3.E-2: Impacts on known archaeological resources associated with CA-SCL-37 and P-43-000432. [Upper Calera Creek Element 2]

Impacts

Two recorded archaeological resources are located adjacent to the APE for the Upper Calera Creek Element 2. While no cultural resources were located on the surface in the APE nearest to the two recorded cultural resources during the on-foot survey conducted in 2009, no subsurface investigation was conducted and there may be buried site components in the APE. Both archaeological sites are potentially eligible for the National Register. Therefore, these sites are considered historic resources as defined by CEQA, and disturbance of these sites could result in a significant impact.

Mitigation

The District shall hire a qualified archaeologist and a Native American monitor to conduct an Extended Archaeological Survey (EAS) in the APE adjacent to the sites prior to construction activities. In order to determine if culturally sensitive resources are present, the District would implement *Mitigation Measure 3.E-2—Extended Archaeological Survey and Avoidance or Data Recovery (Upper Calera Creek Element 2)*.

If archaeological resources are uncovered in the APE, the District shall avoid them if feasible. If disturbance of these resources cannot be avoided through redesign, they shall be evaluated for their eligibility to the National Register by constructing a detailed Archaeological Research Design and Treatment Plan (ARDTP). If a significant archaeological resource is present, the ARDTP and the Archaeological Data Recovery Program contained therein shall be implemented.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.E-2 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts on known archaeological resources would be less than significant.

3.E-3: Impacts on known historical resources. [Upper Calera Creek Element 2]

Impacts

The Program has the potential to indirectly affect a historical resource located near the Upper Calera Creek Element 2, Reach 2 - the circa 1859 ‘Casino’ outbuilding associated with the circa 1828 José Higuera Adobe. Since the ‘Casino’ outbuilding is only about 10 feet from the proposed sheetpile wall, ground borne vibration primarily from sheetpile driving activities during construction could cause damage such as cracks in plaster walls and/or foundation settlement. Significant impacts to the historic ‘Casino’ outbuilding could occur if vibrations from construction activities were to exceed the threshold as described above. In addition, construction activities from equipment storage and movement, and/or personnel, could also accidentally damage the ‘Casino.’ Damage to the ‘Casino’ would be considered a significant impact.

Mitigation

To avoid potential construction damage to the historic ‘Casino’ outbuilding, the District would implement *Mitigation Measure 3.E-3—Vibration Monitoring and Damage Avoidance,* which requires that the District ensures that construction vibration levels do not exceed the potential building damage threshold. If it is determined that construction vibration levels cannot feasibly be reduced to a level below the vibration threshold, the District shall temporarily relocate the ‘Casino’ outbuilding to an area on site yet outside of the construction zone, and shall place it back in its original location after completion of the sheetpile wall.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.E-3 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts on known historical resources would be less than significant.

Geology and Soils

3.F-1: Expose people or structures to potential substantial adverse affects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, strong seismic ground-shaking, or secondary ground-shaking effects such as liquefaction or landslides. [Lower Berryessa Creek Element, Lower Calera Creek Element, Upper Calera Creek Element 1, Upper Calera Creek Element 2, Tularcitos Creek Element]

Impact

Construction according to the latest industry standards and building code requirements for seismic design would minimize the potential for significant damage from fault rupture, seismic ground-shaking, and related secondary seismic effects, such as liquefaction. Current geotechnical practices standard to the industry evaluate site soils for liquefaction potential, have various methods of mitigating the potential damaging effects of liquefaction, and include design criteria to mitigate potential damage from an earthquake. However, because the geotechnical report prepared for the Program (Parikh Consultants, 2004), used as part of this analysis, indicates that liquefaction is a potential concern and requires further evaluation, this impact is considered significant for all program elements except the Lower Penitencia Creek Element.

Mitigation

The District shall ensure that a design-level geotechnical investigation is conducted by a California licensed geotechnical engineer for all elements and facilities prior to or during the final design phase through implementation of *Mitigation Measure 3.F-1—Geotechnical Investigations*. Recommendations from the geotechnical investigation shall be applicable to foundation design, earthwork, backfill, and site preparation. The recommendations shall become part of the construction specifications and be consistent with standard engineering practice within California and CBC and be consistent with any local policies. The construction manager shall conduct inspections and certify that all design criteria have been met in accordance with recommendations of the geotechnical engineer.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.F-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts due to seismic activity would be less than significant.

3.F-4: Expansive soils. [Lower Berryessa Creek Element, Lower Calera Creek Element, Upper Calera Creek Element 1, Upper Calera Creek Element 2, and Tularcitos Creek Element]

Impacts

Program facilities could be damaged due to settlement of weak or saturated subsurface soils. Underlying soils within the program area could also have a high potential for expansion. Shrink-swell soils could exert additional pressures on improvements that eventually lead to significant damage. Settlement could result in misalignment or damage to aboveground and buried facilities as well as damage foundations of paved service roads and concrete slabs. Site-specific geotechnical studies have not yet been conducted to determine soil conditions, and some sites require further geotechnical evaluation to determine shrink-swell potential. If soils present are potentially expansive, damage to program facilities could occur, resulting in a significant impact.

Mitigation

As part of the design-level geotechnical investigation to support the siting of new facilities outlined in *Mitigation Measure 3.F-1—Geotechnical Investigations*, a California licensed geotechnical engineer shall conduct an evaluation of expansive soils in accordance with *Mitigation Measure 3.F-4—Geotechnical Explorations.* If expansive soils are identified during the geotechnical investigation, they shall be handled in accordance with the recommendations the geotechnical engineer provides in the geotechnical report.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.F-1 and Mitigation Measure 3.F-4 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts due to expansive soils would be less than significant.

Hazards and Hazardous Materials

3.H-1: Create a hazard to construction workers, the public, or the environment through exposure to or release of hazardous materials encountered during excavation or grading. [All Elements]

Impacts

If hazardous materials were present in excavated soil or groundwater, a release to the environment could occur and construction workers and the public could be exposed to the hazardous materials in the soil and groundwater and to chemical vapors during construction. While not likely given the past land use within the program area, there is still the possibility of encountering unanticipated hazardous materials in soil. The District's BMP HM-12, Hazardous Materials Management, addresses the potential hazard of encountering hazardous materials and requires that all field personnel follow the appropriate procedures if hazardous materials are discovered and provides direction on actions necessary in the event that an accidental release of hazardous materials occurs. Without a detailed soil and groundwater management plan that is prepared based on site specific data and available to site workers on site, there is a chance of mishandling any discovered contamination, resulting in a significant impact.

Mitigation

Prior to ground breaking activities, the District shall include in construction specifications the implementation of a Soil and Groundwater Management Plan (SGMP) prepared by state registered hazardous waste investigation and remediation professionals. As stated in *Mitigation Measure 3.H-1—Soil and Groundwater Management Plan***,** the plan shall be submitted to the Santa Clara County Hazardous Materials Compliance Division. The SGMP shall be present on site at all times and readily available to site workers. The SGMP shall include a health and safety plan; emergency notification protocols; and handling and sampling procedures for site workers in accordance with OSHA and Santa Clara County Hazardous Materials Compliance Division requirements. The SGMP shall also describe protocols for offsite disposal of contaminated soils or groundwater. In addition, the SGMP shall include coordination and notification protocols and requirements for any inadvertent releases of hazardous materials within the vicinity of any schools.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.H-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts due to exposure or release of hazardous materials encountered during excavation or grading would be less than significant.

3.H-4: Impair implementation of an adopted emergency response or evacuation plan. [All Elements]

Impacts

Program construction could interfere with an adopted emergency response plan or emergency evacuation plan if construction activities involved the complete or partial closure of roadways, interfered with identified evacuation routes, otherwise restricted access for emergency response vehicles, or restricted access to critical facilities such as hospitals or fire stations. While lane closures are not anticipated, construction equipment, including the potential for off-hauling of equipment, could result in increased traffic congestion and could require detours at the pedestrian bridges. This could impede emergency access and would be a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.M-1—Traffic Control Plan* would reduce impacts on emergency response and evacuation plans to a less-than-significant level by requiring the District to provide advanced information and notification to emergency service providers regarding potential detours as well as the timing, location, and duration of construction activities.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.M-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts due to exposure or release of hazardous materials encountered during excavation or grading would be less than significant.

Noise

3.K-1: Short-term and permanent increases in ambient noise levels at nearby noise receptors could exceed established standards and ordinances. [All Elements]

Impacts

Program construction would temporarily increase ambient noise levels in the program vicinity over the duration of construction. The primary noise-generating activities related to construction of the Program would be site preparation and earth-moving activities, site improvements and amenities, and concrete placement. District-adopted BMPs NO-1 (Minimize Noise Pollution) and NO-2 (Minimize Disturbances to Residential Neighborhoods Due to Noise) would be implemented for all construction activities as they occur in each of the elements. Although implementation of the District BMPs would reduce adverse noise effects on adjacent land uses, the BMPs are general and noise levels would likely still be substantially above the existing ambient levels given the proximity of sensitive receptors and the noise impacts from construction activities would therefore be considered significant.

With the exception of the pump station, operation of all program components on all elements would not represent a significant change to the current level of activity associated with existing conditions. Operation of the pump station at the Tularcitos Creek Element would have the potential to expose nearby sensitive receptors, including residences and users of the Peter T. Gill Memorial Park, to intermittent increase in noise levels. However, the Tularcitos Creek Element is being reviewed in this EIR at a program level and would undergo additional CEQA review prior to implementation. The operational impacts would be significant if the project-level analysis concludes that pump station noise levels would exceed the City's established land use compatibility standards at nearby sensitive receptor locations.

Mitigation

Implementation of *Mitigation Measures 3.K-1a* though *3.K-1c* would reduce the Program's construction-related impacts to a less-than-significant level by assuring that the District require its contractor to use noise control techniques on equipment, vehicles, and stationary sources. As part of the Tularcitos Creek Element, the District shall conduct a detailed noise and vibration assessment (*Mitigation Measure 3.K-1d—Tularcitos Creek Noise Study and Mitigation Plan*) to evaluate the operations impacts of the pump station on nearby sensitive receptors. Additional design measures, if necessary, shall be incorporated to avoid residential DNL exposure above levels specified in the Milpitas Noise Element for compatible land uses, or levels that would result in increases of more than 3 dBA at nearby residential property lines, whichever is more restrictive.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 3.K-1a through 3.K-1c are feasible and will adopt them as described in the EIR.

These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts related to increases in ambient noise levels at nearby noise receptors would be less than significant.

Recreation

3.L-2: Indirect impacts on the recreational experience caused by construction. [Lower Berryessa Creek Element and Lower Penitencia Creek Element]

Impacts

Indirect impacts on the quality of the recreational experience would be associated with vegetation removal. Removal of the trees and shrubs could cause a significant change in the character of the recreation resources associated with the Lower Berryessa Creek Element and the Lower Penitencia Creek Element. Without specific provisions for tree and shrub replacement, however, the removal of the trees and shrubs would have a substantial long-term impact on the character of the pedestrian path along the Lower Berryessa Creek Element and the levee maintenance access road along the Lower Penitencia Creek Element, and would result in a significant impact on the levee trails.

Mitigation

Implementation of *Mitigation Measure 3.D-6a—Tree and Shrub Replacement* would reduce Lower Berryessa Creek Element and Lower Penitencia Creek Element impacts on the recreational trails within the Program area to a less-than-significant level because visual conditions would be substantially restored along these creeks.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.D-6a is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, indirect impacts on the recreational trails would be less than significant.

Transportation and Traffic

3.M-1: Conflict with local plans and policies related to the City's existing transportation and circulation system (including mass transit, and non-motorized travel) as well as the Santa Clara County CMP. [All Elements]

Impacts

For the Lower Berryessa Creek Element and Lower Calera Creek Element, increases in traffic associated with construction vehicle trips (truck trips and worker trips) would contribute to existing traffic volumes along roadways in the Program vicinity (e.g., I-680, SR 237, North Milpitas Boulevard, East Calaveras Boulevard, Abel Street, Jacklin Road, Arizona Avenue, and Jacklin Court). Based on the program construction-generated trips, the highest level of truck traffic in the Lower Berryessa Creek Element would generate an average of about one truck every 2.5 minutes, and program-generated traffic would increase the daily traffic volume on local roadways by less than two percent, and by no more than about 0.5 percent on regional roadways. The highest level of truck traffic for the Lower Calera Creek Element would generate an average of about one truck every five minutes, and program-generated traffic would increase the daily traffic volume on local roadways by less than two percent, and by no more than about 0.1 percent on regional roadways. Those percent increases in traffic volumes would not be substantial, and program traffic would not significantly disrupt daily traffic flow on these roadways. However, impedance to traffic flow during the weekday peak traffic hours is considered a short-term significant impact. Construction activities could also cause temporary service delays to VTA local bus routes 46 and 66 and AC Transit route 217 and could conflict with each transit agency's established level of service goals, resulting in a significant impact. The increase in construction vehicles on local roadways could also cause short-term conflicts with access to pedestrian facilities the City's policies related to the provision of bicycle access, resulting in a significant impact. However, there are sufficient alternatives such that impacts to pedestrian passage and recreational opportunities would not be significant.

For the Upper Calera Creek Element 1, Upper Calera Creek Element 2, Tularcitos Creek Element, and Lower Penitencia Creek Element, preliminary information on construction material and disposal requirements for these program-level elements has not been developed. However, the transport, use, and disposal of construction materials would be similar to those described for the Lower Berryessa Creek Element and Lower Calera Creek Element. Therefore, impacts associated with the construction of the four program-level elements and the temporary effect on traffic circulation; temporary service delays for VTA and AC Transit local bus routes; conflict with each transit agency's established level of service goals; provision of bicycle access; and interference with access to pedestrian facilities would result in a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.M-1—Traffic Control Plan* would reduce transportation impacts to a less-than-significant level during program construction because it would require the contractor(s) to (1) schedule truck trips outside of peak morning and evening commute hours as needed to avoid adverse impacts on traffic flow; (2) minimize disruption to local bus routes by coordinating with all local traffic agencies, VTA, and AC Transit prior to construction; (3) identify haul routes and detour routes; and (4) establish a suite of traffic safety measures.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.M-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts due to conflict with local plans and policies related to the City's existing transportation and circulation system would be less than significant.

3.M-2: Increase potential traffic safety hazards for vehicles, bicyclists, and pedestrians on public roadways. [All Elements]

Impacts

For all elements, construction vehicles transporting excavated materials to offsite locations and delivering equipment and supplies (e.g., imported fill, cement, concrete, and other construction supplies) would share the roadways with other vehicles and could result in safety hazards on these roadways for drivers, bicyclists, and pedestrians especially in the vicinity of schools and residential areas. Implementation of District BMP TR-1 (Public Safety Measures) would generally avoid confusion for drivers, the presence of construction vehicles and equipment in the vicinity of schools would still pose a significant impact regarding traffic safety. The use of large trucks to transport equipment and material to and from the program worksite(s) for construction could affect road conditions and increase traffic safety hazards on the designated haul routes by increasing the rate of road wear. The degree to which this impact would occur depends on the design (pavement type and thickness) and existing condition of the road. Thus, wear-and-tear on designated haul routes could cause increased traffic safety hazards for drivers and cyclists, resulting in a significant impact.

Mitigation

Implementation of *Mitigation Measure 3.M-1—Traffic Control Plan* would reduce potential short-term safety impacts from program construction activities to a less-than-significant level because it requires a Traffic Control Plan that includes provisions such as: installation of signs warning motorists, bicyclists, and pedestrians of the construction zones; notification of detour routes for vehicles and alternate routes for bicyclists; and use of safety signs to slow approaching traffic at program access points to reduce traffic hazards during construction. *Mitigation Measure 3.M-2-Road Repair* would reduce safety impacts caused by road damage to a less-than-significant level because roads damaged by construction would be repaired to a structural condition equal to that which existed prior to construction activity.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.M-1 and Mitigation Measure 3.M-2 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts due potential traffic safety hazards would be less than significant.

3.M-3: Impair access to adjacent roadways and land uses for both general and emergency response traffic. [All Elements]

Impacts

Construction activities would generally be conducted in the established construction areas and within the District's ROW. The EIR analysis assumes that the District would comply with all construction and permanent easements obtained from the UPRR, City of Milpitas, Milpitas High School, and Thomas Russell Middle School. While lane closures are not anticipated, construction equipment could result in increased traffic congestion and could temporarily impede emergency access, resulting in a significant impact during construction.

Mitigation

Implementation of *Mitigation Measure 3.M-1—Traffic Control Plan*, which would require the District to provide advanced information and notification to emergency service providers regarding potential detours and the timing, location, and duration of construction activities, would reduce impacts related to emergency access to a less-than-significant level.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.M-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts due to impaired access for general and emergency response traffic would be less than significant.

Utilities and Service Systems

3.N-1: Adequate landfill capacity to accommodate the Program's solid waste disposal needs. [All Elements]

Impact

Construction of the Program could generate approximately 418,200 cubic yards of construction waste. To the extent feasible, the District would re-use any suitable construction waste as fill material when reconstructing the raised levees and maintenance roads. Landfills in the program vicinity have available permitted capacities ranging from 540,100 cubic yards to 62,000,000 cubic yards with expected site lives of 8 to 19 years. In most cases, the amount of construction waste generated by the Program would not adversely affect landfill capacity. However, if all construction waste were to be deposited at the Zanker Materials Processing Plant or the Zanker Road Resource Recovery Operations Landfill, it could reduce these facilities' overall capacity by 83.8 percent and 59.7 percent respectively. Depositing all construction waste at either facility would result in a significant impact given the high percentage of the available capacity that would be used for the Program.

Mitigation

Implementation of *Mitigation Measure 3.N-1—Appropriate Landfill Use* would reduce impacts on landfill capacity to less-than-significant levels by avoiding disposal of program construction waste in landfills with capacity limitations.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.N-1 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts to landfill capacity would be less than significant.

3.N-2: Potential to interfere with existing utilities. [All Elements]

Impact

Construction activities for all of the elements could result in damage to or interference with existing above- and below-ground utilities including, but not limited to, water supply, natural gas, oil, telecommunications, cable (fiber optic), electrical, sanitary sewer, and storm drainage lines. Due to the presence of numerous underground utility lines within and adjacent to the program area, relocation of existing utilities, potential damage to the existing utilities, and/or temporary service disruptions would be considered a significant impact.

Mitigation

Applicable mitigation measures that would reduce potential interference with utility operations to a less-than-significant level include requiring utility identification in accordance with *Mitigation Measure 3.N-2a—Preconstruction Utility Identification and Coordination*; protection of utilities during construction in accordance with *Mitigation Measure 3.N-2b—Protection of Other Utilities During Construction*; and notification of utility customers prior to and during construction of the Program in accordance with *Mitigation Measure 3.N-2c—Advance Notification*. In addition, an emergency response plan would be required to reduce impacts related to damage of utilities in accordance with *Mitigation Measure 3.N-2d—Emergency Response Plan and Notification*.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 3.N-1a through 3.N-1d are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, impacts due to interference with existing utilities would be less than significant.

3.N-3: Impacts related to compliance with federal, state, and local statutes and regulations related to solid waste. [All Elements]

Impact

The California Integrated Waste Management Board (CIWMB) determined that the City of Milpitas achieved the State of California's 50 percent solid waste diversion goal between 1999 and 2006 (CIWMB, 2010a). If the total amount of construction-related waste were not reused or recycled in accordance with the CIWMB diversion goals, impacts related to compliance with federal, state, and local solid waste statutes would be considered significant.

Mitigation

Implementation of *Mitigation Measure 3.N-3—Waste Management Plan* would reduce impacts related to compliance with solid waste statutes and regulations to less-than-significant levels by reducing the amount of excavated soil and construction debris disposed of in local landfills.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 3.N-3 is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure its implementation. With this measure in place, impacts related to compliance with solid waste regulations would be less than significant.

2. Significant Impacts that Cannot Be Fully Mitigated

Air Quality

3.C-2: Generation of criteria pollutants associated with equipment exhaust that could result in the violation of air quality standard or contribute substantially to an existing or projected air quality violation during construction. [All Elements]

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment, but the Board finds that mitigation is unlikely to consistently and reliably reduce impacts of criteria pollutants associated with equipment exhaust on air quality during construction to a less than significant level, and that no alternate or additional mitigation that would provide such a reduction has been identified as feasible. Consequently the Board finds that a significant residual impact is likely during at least parts of the construction window.

Construction of the Lower Berryessa Creek and the Lower Calera Creek elements would result in average daily nitrogen oxides (NOx) emissions that would likely exceed the NOx significance thresholds in the 2010 BAAQMD CEQA Guidelines. Thus, NOx emissions generated from equipment exhaust would likely result in a violation of an air quality standard or contribute substantially to an existing or projected air quality violation, and are therefore considered significant. Given that construction of the other elements associated with the Program (i.e., Tularcitos Creek Element, the Upper Calera Creek elements, and Lower Penitencia Creek Element) would likely require similar equipment and activities as the Lower Berryessa Creek Element and the Lower Calera Creek Element, it can be assumed that NOx exhaust emissions from such activities could also be significant.

Implementation of *Mitigation Measure 3.C-2a—Exhaust Emissions Reduction Measures* and *Mitigation Measure 3.C-2b—Emissions Reduction Plan* would reduce construction-related exhaust emissions associated for all elements. However, while these measures would help reduce emissions of NOx by approximately 20 percent to approximately 154 pounds per day and 115 pounds per day for the Lower Berryessa Creek Element and Lower Calera Creek Element, respectively, the mitigated emissions associated with construction of all elements would likely still exceed the NOx threshold of 54 pounds per day as specified by the 2010 BAAQMD CEQA Guidelines. Therefore, the exhaust emission impact associated with construction would remain significant and unavoidable.

Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. The Program Alternatives described in the EIR would require a similar or increased level of use of construction equipment that would result in release of criteria pollutants at a similar or greater level than the Program. In the absence of flooding, the No Project Alternative would avoid significant impacts related to air quality. However, in the probable event of flooding, the No Project Alternative would result in deposition of large amounts of sediment and debris throughout the flood zone requiring excavation and repair. These activities could result in similar releases of criteria pollutants as the Program.

In summary, the District has adopted mitigation (Mitigation Measures 3.C-2a and 3.C-2b) that comprise all of the approaches identified as feasible to reduce air quality impacts associated with the Program. However, even with these measures in place, construction-phase emissions of NOx would likely exceed the threshold of 54 pounds per day as specified by the 2010 BAAQMD CEQA Guidelines. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. Any such exceedance would constitute a significant residual impact, and is considered unavoidable.

3.C-3: Cumulatively considerable increase in criteria pollutant emissions for which the area is in non-attainment of standards. [All Elements]

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment, but the Board finds that mitigation is unlikely to consistently and reliably reduce impacts of cumulatively considerable criteria pollutants on air quality during construction to a less than significant level, and that no alternate or additional mitigation that would provide such a reduction has been identified as feasible. Consequently the Board finds that a significant residual impact is likely during at least parts of the construction window.

The 2010 BAAQMD CEQA Guidelines includes quantitative thresholds for exhaust emissions associated with construction activities. NOx emissions from program construction would be significant and unavoidable even if mitigation were to be implemented. Therefore, based on the significance thresholds identified in the 2010 BAAQMD CEQA Guidelines, construction of the Program would result in a significant and unavoidable cumulatively considerable increase in criteria pollutant emissions.

Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or program alternatives identified in the EIR. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. The Program Alternatives described in the EIR would require a similar or increased level of use of construction equipment that would result in release of criteria pollutants at a similar or greater level than the Program. In the absence of flooding, the No Project Alternative would avoid significant impacts related to air quality. However, in the probable event of flooding, the No Project Alternative would result in deposition of large amounts of sediment and debris throughout the flood zone requiring excavation and repair. These activities could result in similar releases of cumulatively considerable criteria pollutants as the Program.

In summary, the District has adopted mitigation (Mitigation Measures 3.C-2a and 3.C-2b) that comprise all of the approaches identified as feasible to reduce air quality impacts associated with the Program. However, even with these measures in place, construction-phase emissions of NOx would likely exceed the BAAQMD threshold. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. Any such exceedance would constitute a significant residual impact, and is considered unavoidable.

3.C-4: Expose sensitive receptors to substantial pollutant concentrations. [Lower Berryessa Creek Element, Upper Calera Creek Element 1, Upper Calera Creek Element 2, Tularcitos Creek Element, Lower Penitencia]

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment, but the Board finds that mitigation is unlikely to consistently and reliably reduce impacts of exposure of sensitive receptors to substantial pollutant concentrations during construction to a less than significant level, and that no alternate or additional mitigation that would provide such a reduction has been identified as feasible. Consequently the Board finds that a significant residual impact is likely during at least parts of the construction window.

Potential impacts related to exposing sensitive receptors to substantial pollutant concentrations due to program-related construction activities are based on the findings of the Health Risk Assessment (HRA) that was conducted for the Lower Berryessa Creek and Lower Calera

Creek elements. Program construction activities would produce diesel particulate matter (DPM) and $PM_{2.5}$ emissions due to construction equipment. These emissions could result in elevated concentrations of DPM and $PM_{2.5}$ at nearby receptors that could lead to an increase in the risk of cancer or other health impacts. The maximum cancer risk would be 10.1 per million for construction activities associated with the Lower Berryessa Creek Element. The maximum cancer risk would be 5.6 per million for the Lower Calera Creek Element. The cancer risk due to construction activities for the Lower Berryessa Creek Element is greater than the BAAQMD threshold of 10 per million and would be significant. The cancer risk due to construction activities for the Lower Calera Creek Element is below the BAAQMD threshold of 10 per million and would be less than significant. It is anticipated that impacts associated with the program-level elements would be similar to those described for the project-level elements and would exceed the BAAQMD threshold, resulting in a significant impact.

$PM_{2.5}$ concentrations that would result from program-related construction equipment exhaust were determined using the SCREEN3 dispersion model. The maximum unmitigated annual $PM_{2.5}$ exposure as a result of construction activities would be 0.65 $\mu g/m^3$ for the Lower Berryessa Creek Element and 0.36 $\mu g/m^3$ for the Lower Calera Creek Element, both of which would exceed the BAAQMD threshold of 0.3 $\mu g/m^3$, resulting in a significant impact. Although preliminary information on construction material and activity requirements for the program-level elements (i.e., Tularcitos Creek Element, the Upper Calera Creek Elements 1 and 2, and Lower Penitencia Creek Element) have not yet been determined, it is anticipated that the activities and associated $PM_{2.5}$ concentrations would be similar to those of the Lower Berryessa Creek Element and could exceed the $PM_{2.5}$ concentrations threshold of 0.3 $\mu g/m^3$ and would therefore constitute a significant impact.

Mitigation Measures 3.C-2a—Exhaust Emissions Reduction Measures and *3.C-2b—Emissions Reduction Plan* would reduce PM2.5 emissions from construction activities by 45 percent. PM2.5 concentrations associated with the Lower Berryessa Creek Element would be reduced to 0.36 µg/m3 and PM2.5 concentrations for the Lower Calera Creek Element would reduced to 0.20 µg/m3. Therefore, impacts related to PM2.5 concentrations associated with the Lower Berryessa Creek Element would be significant and unavoidable, and for the Lower Calera Creek Element, impacts would be mitigated to less than significant. For the program-level elements, similar to the Lower Berryessa Creek Element, Mitigation Measures 3.C-2a and 3.C-2b would reduce PM2.5 emissions from construction activities by 45 percent, but program-level PM2.5 concentration impacts would be significant and unavoidable.

Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or program alternatives identified in the EIR. There are no additional mitigation measures that would further reduce exposure of sensitive receptors to substantial pollutant concentrations during construction beyond that described in the EIR. The Program Alternatives described in the EIR would require a similar or increased level of use of construction equipment that would result in release of pollutants at a similar or greater level than the Program. In the absence of flooding, the No Project Alternative would avoid significant impacts related to air quality. However, in the probable event of flooding, the No Project Alternative would result in deposition of large amounts of sediment and debris throughout the flood zone requiring excavation and repair. These activities could result in similar releases of pollutants as the Program.

In summary, the District has adopted mitigation (Mitigation Measures 3.C-2a and 3.C-2b) that comprise all of the approaches identified as feasible to reduce air quality impacts associated with the Program. However, even with these measures in place, exposure of sensitive receptors to substantial pollutant concentrations during construction would likely exceed the BAAQMD threshold. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. Any such exceedance would constitute a significant residual impact, and is considered unavoidable.

Cumulative Impacts (Air Quality)

5.B: Cumulative construction and operations emissions of criteria pollutants.

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment, but the Board finds that mitigation is unlikely to consistently and reliably reduce cumulative air quality during construction to a less than significant level, and that no alternate or additional mitigation that would provide such a reduction has been identified as feasible. Consequently the Board finds that a significant residual impact is likely during at least parts of the construction window.

The geographic scope of potential cumulative air quality impacts encompasses the immediate project vicinity for particulates and the San Francisco Bay Area Basin for criteria pollutants. Any proposed project that would individually have a significant air quality impact would also be considered to have a significant cumulative air quality impact. Cumulative impacts could occur if implementation of the Program and past, present and future projects within the geographic scope resulted in increased construction emissions that violated air quality standards, contributed substantially to the regions non-attainment status for ozone and particulate matter or exposed sensitive receptors to pollutants. Construction-related criteria pollutant emissions impacts and NOx emissions would be significant. There would be a cumulative contribution from the Program and the other projects to the air basin's non-attainment status for ozone. In addition, operation of the proposed pump station within the Tularcitos Creek channel would constitute a new source of emissions. Since design of the pumps has not been finalized, operation of the proposed pump station could contribute to operations-related cumulative air quality impacts. Therefore, the Program's contribution to both construction-related and operations-related cumulative air quality impacts with respect to the region's non-attainment status for ozone would be cumulatively considerable and thus would be significant.

The proposed Program and other projects in the region could result in exposure of criteria pollutant concentrations on sensitive receptors, a significant impact. Concentrations of

PM2.5 would exceed BAAQMD guidelines. The Program's contribution to construction related cumulative air quality impacts with respect to the exposure of pollutant concentrations of PM2.5 concentrations on sensitive receptors would be cumulatively considerable and thus would be significant.

Exhaust and fugitive dust emissions from the operation of Lower Berryessa Creek Element, Lower Calera Creek Element, Upper Calera Creek Element 1, Upper Calera Creek Element 2 and the Lower Penitencia Creek Element would be less than significant based on the 2010 BAAQMD CEQA guidelines. However, the Tularcitos Creek Element's operation of the new pump station would result in significant exhaust emissions. Operation of the future BART Berryessa Extension Project would have an effect on existing air quality conditions in the vicinity of the Program. Although operation of the BART project would likely reduce exhaust emissions in the Program area, it is conservatively assumed that there would be a contribution from the Program and the BART project related to exhaust emissions. The Program's contribution to operations related cumulative air quality impacts would be significant.

Operation of the proposed pump station as proposed under the Tularcitos Creek Element could result in odorous emissions from the diesel-driven pumps. There would be a cumulative contribution from the Program and other projects in the region related to exposing sensitive receptors to objectionable odors. Therefore, the Program's contribution to operations related cumulative odor impacts would be significant.

Implementation of *Mitigation Measure 5.B-1—Dust Control Measures* along with District best management practices (BMPs) related to dust control and air quality would reduce the Program's fugitive PM_{10} and $PM_{1.5}$ emissions to a less-than-significant level. Furthermore, implementation of *Mitigation Measure 5.B-2a—Exhaust Emissions Reduction Measures* and *Mitigation Measure 5.B-2b—Emissions Reduction Plan* would help reduce construction-related exhaust emissions. However, even with implementation of these mitigation measures, the mitigated emissions would still exceed BAAQMD's significance threshold for NO_x emissions. As for operations-related exhaust emissions, implementation of *Mitigation Measure 5.B-2c—Air Pollutant Emissions Analysis* would ensure that emission controls are incorporated into the pump design for the Tularcitos Creek Element, reducing cumulative pollutant emissions as well as cumulative odorous emissions to a less-than-significant level. Since the Program would exceed the BAAQMD's significance threshold for NO_x emissions, the Program's contribution to construction-related exhaust emissions impacts would be cumulatively considerable and would thus be significant and unavoidable.

Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or program alternatives identified in the EIR. There are no additional mitigation measures that would further reduce cumulative air quality impacts during construction beyond that described in the EIR. The Program Alternatives described in the EIR would require a similar or increased level of use of construction equipment that would result in release of air quality emissions at a similar or greater level than the Program. In the absence of flooding, the No Project Alternative would avoid significant impacts related to air quality. However, in the probable event of flooding, the No Project Alternative would result in deposition of large amounts of sediment and debris throughout the flood zone requiring excavation and repair. These activities could result in similar releases of air quality emissions as the Program.

In summary, the District has adopted mitigation (Mitigation Measures 5.B-1 and 5.B-2a through 5.B-2c) that comprise all of the approaches identified as feasible to reduce air quality impacts associated with the Program. However, even with these measures in place, cumulative air quality impacts during construction would likely exceed the BAAQMD threshold. There are no additional mitigation measures that would further reduce construction emissions beyond that described in the EIR. Any such exceedance would constitute a significant residual impact, and is considered unavoidable.

3. Contributions to Cumulative Impacts

Aesthetics

5.A: Cumulative impacts on scenic resources (vistas, roadways, and designated scenic areas) or the visual character of the program area and immediate vicinities.

Impact

For visual impacts, the geographic scope of potential cumulative impacts includes the program area and immediate vicinity. Cumulative aesthetics impacts could occur if other past, present and future projects within the geographic scope involve the removal of trees, construction of new facilities, or other changes that would affect the same visual resources. The Program would result in both short-term and long-term significant impacts on scenic resources related to the removal of trees located within public viewsheds and long-term operation of the proposed pump station under the Tularcitos Creek Element. The overlap of the SCVWD Stream Maintenance Program and BART Berryessa Extension Project with the Program and the sequence of joint USACE/SCVWD Upper Berryessa Creek Project may contribute to cumulative impacts on scenic resources; some of these projects are in the preliminary phase (i.e., the joint USACE/SCVWD Upper Berryessa Creek Project) and could include tree removal activities. Without project-level mitigation, the Program’s contribution to this impact could be cumulatively considerable and significant.

The Program could result in significant operations impacts if the new lighting for the pump station (as proposed under the Tularcitos Creek Element) is not adequately placed or designed. Although the proposed improvements for the above-mentioned cumulative projects would not occur in the vicinity of the pump station, the Program’s contribution to cumulative aesthetics impacts related to new sources of light or glare would add to other background sources of light and glare in the pump station vicinity. Therefore, the Program’s contribution to cumulative visual quality and character impacts would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.C-3a—Tree and Shrub Replacement* would ensure that the visual conditions of the segment along Lower Berryessa Creek are restored after completion of construction and that permanent damage to scenic resources does not occur as a result of Program implementation. Implementation of tree replacement mitigation measures along Berryessa Creek by the other related projects would further reduce the magnitude of this impact.

In addition, implementation of *Mitigation Measures 5.A-1—Aesthetically Compatible Design* and *5.A-2—Placement and Design of Nighttime Security Lighting* would ensure that the pump station would not contrast substantially with the existing character of the neighborhood and would minimize the Program's light and glare impacts, respectively. Therefore, the Program's contribution to these impacts would not be cumulatively considerable, and would be less than significant.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.C-3a, 5.A-1, and 5.A-2 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to aesthetic resources impacts would not be cumulatively considerable and would be less than significant.

Air Quality

5.B: See the discussion above regarding Significant Impacts that Cannot be Fully Mitigated.

Biological Resources

5.C: Cumulative loss of sensitive biological resources during construction and operations.

Impact

The geographic scope of potential biological resources encompasses the jurisdictional waters, and habitats for special-status species within the program area as well as biologically linked areas in the Coyote Watershed. The Program could adversely affect sensitive habitats used by special-status species including California red-legged frog, western pond turtle, special-status birds and bats, and San Francisco dusky-footed woodrat. Implementation of various District BMPs related to water quality and biological resources would minimize the Program's potential impacts on special status birds and bats, western pond turtle and California red-legged frog. Some of the projects in the geographic scope could also have the potential to affect these species, resulting in a significant cumulative impact.

The Program could temporarily and permanently affect jurisdictional wetlands and waters that are located within the stream reaches. The joint USACE/SCVWD Upper Berryessa Creek Project and the BART Berryessa Extension Project, which would also occur along separate reaches of Berryessa Creek, could also result in similar impacts on wetlands. However, implementation of the District's BMPs would sufficiently minimize temporary project-level impacts. Similar BMPs would also likely be implemented for the joint USACE/SCVWD Upper Berryessa Creek Project as that project is being led in conjunction between the District and the Corps.

The Program would result in a less-than-significant impact on movement corridors for fish and wildlife species since the habitats in the program area do not provide a unique resource. Therefore, the Program's contribution to movement corridor impacts would not be cumulatively considerable and would be less than significant.

The Program could conflict with local policies or ordinances protecting biological species because construction would require removal of some trees that are under the jurisdiction of the City of Milpitas' local tree protection ordinance. It is likely that several projects within the vicinity would also remove protected trees, particularly the joint USACE/SCVWD Upper Berryessa Creek Project and the BART Berryessa Extension Project. Although the Program and the cumulative projects would be required to adhere to the City of Milpitas' criteria for tree removal permits, which stipulate tree protection measures, the Program's contribution to this impact would be cumulatively considerable, and would be significant.

Mitigation

Implementation of *Mitigation Measure 5.C-1—Protection of San Francisco Dusky-footed Woodrat* would ensure that the Program's contribution to this impact would not be cumulatively considerable and would be less than significant. Implementation of San Francisco Dusky-footed Woodrat protection mitigation measures by other related projects would further reduce the magnitude of this impact.

Mitigation Measure 5.C-2a—Wetland and Riparian Habitat Avoidance and Minimization and *Mitigation Measure 5.C-2b—Compensate for Wetland and Riparian Habitat Loss* would reduce permanent impacts on federally or state protected wetlands or waters to a less-than-significant level. With implementation of these measures, impacts on federally and state protected wetlands and waters would be minimized and the Program's contribution to this impact would not be cumulatively considerable and would be less than significant. In addition, implementation of similar mitigation measures by other related projects would further reduce the magnitude of this impact.

Further, the Program's impacts related to tree removal would be less than significant with implementation of *Mitigation Measure 5.C-3a—Tree and Shrub Replacement* and *Mitigation Measure 5.C-3b—Tree Protection Measures.* With implementation of these two mitigation measures, potential conflicts with local tree ordinances and policies would be minimized and the Program's contribution to this impact would not be cumulatively considerable and would be less than significant. Implementation of similar mitigation measures by other related projects would further reduce the magnitude of this impact.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.C-1 through 5.C-3b are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to biological resources impacts would not be cumulatively considerable and would be less than significant.

Cultural Resources

5.D: Cumulative increase in impacts on archaeological, paleontological, and historical resources.

Impact

The geographic scope of potential cumulative impacts on cultural resources encompasses the archaeological and architectural area of potential effects (APE) for the program area and immediate vicinity. The Program would contribute to cumulative impacts on cultural resources, including historical, archeological, and paleontological resources if the Program and past, present and future projects were to adversely affect the same historical or cultural resources within the program vicinity. The Program has the potential for discovery of unknown historical resources and unknown archaeological resources although no archaeological sites were identified by records search or found during surface surveys. Implementation of District BMPs CU-2 (Archaeological Finds) and CU-3 (Burial Finds) would minimize potential impacts on unknown archaeological resources and human remains for all project-level and program-level elements. Since the site design and work area for program-level elements has not been finalized, there is also potential for archaeological resources and human remains to be present within the program area, if the final program design includes areas not surveyed during preparation of this EIR. Most of the projects in vicinity would likely involve ground disturbing activities and could encounter previously undiscovered archaeological resources during construction. Thus, cumulative impacts on unknown cultural resources could be significant and the Program's contribution to cumulative impacts on unknown cultural resources would be cumulatively considerable and significant.

There are no known archaeological resources located in the APEs for the Lower Berryessa Creek Element, Lower Calera Creek Element, Upper Calera Creek Element 1, and the Tularcitos Creek Element. There are no known archaeological resources in the general area of the Lower Penintencia Creek Element based on the records search conducted on October 22, 2010 (File No. 10-0394). The Program could potentially affect two known archaeological resources located along the Upper Calera Creek Element 2 adjacent to the APE. There are no known cumulative projects located within the vicinity of these archaeological resources. Thus, there is no cumulative impact beyond that disclosed for the proposed Program.

There are no known historical resources located in the APEs for the Lower Berryessa Creek Element, Lower Calera Creek Element, Upper Calera Creek Element 1, Tularcitos Creek Element, and Lower Penitencia Creek Element. The Program could potentially affect a historical resource located near the Upper Calera Creek Element 2, the ca. 1859 'Casino' outbuilding associated with the ca. 1829 José Higuera Adobe. There are no known cumulative projects located within the vicinity of the José Higuera Adobe. Thus, there is no cumulative impact beyond that disclosed for the proposed Program.

The program area has little to no potential to yield paleontological resources because it is predominantly underlain by artificial fills, which are engineered mixtures of sand, silt or gravel that would not contain unique or significant fossils. This unit is unlikely to contain paleontological resources because the area is highly disturbed from previous construction, as well as ongoing maintenance, and the minimal depth of disturbance in native soils. Most of the projects in the vicinity would also involve ground disturbing activities and could result in impacts on paleontological resources. Thus, cumulative impacts on paleontological resources could be significant. However, because the program area has little to no potential to yield paleontological resources, the Program's contribution to impacts on paleontological resources would not be cumulatively considerable and would be less than significant.

Mitigation

Implementation of *Mitigation Measure 5.D-1—Cultural Resources Survey and Impact Assessment* would require additional survey and analysis of new program areas, if any, when program-level elements are designed. Therefore, program-related impacts on unknown historical resources, archaeological resources and human remains would be less than significant. Implementation of this measure would ensure that any cultural resources encountered during construction would be recovered and appropriately managed. Thus, with mitigation, the Program's contribution to this impact would not be cumulatively considerable and would be less than significant. Implementation of similar cultural resources surveys and impact assessments by other related projects in the immediate vicinity would further reduce the magnitude of this impact.

Impacts on known archaeological resources in the vicinity of Upper Calera Creek Element 2 would be reduced to a less-than-significant level with implementation of *Mitigation Measure 5.D-2—Extended Archaeological Survey*, requiring an extended archaeological survey in the APE adjacent to the two known archaeological sites prior to construction activities. Thus, the Program's contribution to this cumulative impact on known archaeological resources would not be cumulatively considerable and would be less than significant.

In addition, impacts on historic resources in the vicinity of Upper Calera Creek Element 2 would be reduced to a less-than-significant level with implementation of *Mitigation*

Measure 5.D-3—Vibration Monitoring, requiring a vibration monitoring device to be attached to these historic buildings to ensure that the peak construction vibration levels do not exceed the potential building damage threshold. Therefore, the Program's contribution to this cumulative impact on historic resources would not be cumulatively considerable and would be less than significant.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.D-1 through 5.D-3 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to cultural resources impacts would not be cumulatively considerable and would be less than significant.

Geology and Soils

5.E: Cumulative exposure of people or structures to geologic and seismic hazards.

Impact

The geographic scope of potential cumulative geologic and seismic impacts encompasses the program area and immediate vicinity. Potential geologic and seismic impacts associated with implementation of the Program could include fault rupture, ground-shaking effects and secondary ground-shaking effects. Potential effects associated with fault rupture would be less than significant since the Program would not expose people or property to additional risk and would follow current engineering practices for the San Francisco Bay Area and building code requirements.

The presence of liquefiable soils in the program area could result in secondary ground-shaking effects and directly affect the Program. With the exception of the Stream Maintenance Project and the BART Berryessa Extension Project, none of the projects in the geographic scope fall within the same footprint as the Program and would not contribute to cumulative geologic and seismic impacts. The SCVWD Stream Maintenance Program would not be expected to result in significant geologic and seismic impacts because it does not entail construction of new structures. Since the Berryessa Extension Project would include construction of a new facility in the program area and given the presence of liquefiable soils in the program area, the Program's contribution to cumulative seismic impacts would be cumulatively considerable and significant.

Program facilities could be damaged due to settlement of weak or saturated subsurface soils and underlying soils could have a high potential for expansion. The SCVWD Stream Maintenance Program would not be expected to result in significant geologic and seismic impacts as it includes routine stream and canal maintenance activities. However, as both the

Berryessa Extension Project and the Program would include construction of new above-ground facilities above soils that have a high potential for expansion, the Program's contribution to cumulative seismic impacts would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.E-1— Geotechnical Investigations* would require a California licensed geotechnical engineer or engineering geologist to conduct geotechnical investigations of all program components and facilities prior to final design and to prepare recommendations. This measure would also require additional geotechnical investigations to specify seismic and geologic hazards which would further reduce slope instability impacts. Implementation of similar geotechnical investigation mitigation measures in the program area by the other related projects would further reduce the magnitude of this impact. Implementation of *Mitigation Measure 5.E-2—Geotechnical Explorations* would require geotechnical explorations prior to siting of new facilities and would reduce program impacts regarding expansive soils to a less-than significant level. Implementation of similar geotechnical exploration mitigation measures by the other related projects would further reduce the magnitude of this impact. Therefore, the Program's contribution to geologic and soil conditions would not be cumulatively considerable, and would be less than significant.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.E-1 through 5.E-2 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to geology and soils impacts would not be cumulatively considerable and would be less than significant.

Hazards and Hazardous Materials

5.G: Cumulative effects related to hazardous conditions and exposure to or release of hazardous materials.

Impact

The geographic scope of potential cumulative hazards and hazardous materials impacts encompasses the program area and immediate vicinity. The potential for encountering hazardous materials during excavation of levees is generally considered to be low in most of the program area except near the Milpitas Materials facility where the potential is considered moderate. Implementation of the District's BMP HM-12 (Hazardous Materials Management) would address the potential hazard of encountering hazardous materials and requires that all field personnel understand the appropriate procedures to be followed in the event of encountering hazardous materials. Additionally, if hazardous material releases occurred as a result of the Program, the SCVWD Stream Maintenance Program, or the Berryessa Extension Project, significant cumulative impacts could occur. Therefore, the

Program's contribution to cumulative hazardous materials exposure impacts would be cumulatively considerable and significant.

Program construction could interfere with an adopted emergency response plan or emergency evacuation plan if construction activities involved the complete or partial closure of roadways, interfered with identified evacuation routes, otherwise restricted access for emergency response vehicles, or restricted access to critical facilities such as hospitals or fire stations. The SCVWD Stream Maintenance Program and the Berryessa Extension Project have construction schedules that overlap with the Program and could also interfere with implementation of an adopted emergency response plan or emergency evacuation plan as a result of road closures, increased traffic, and traffic delays. Therefore, the Program's contribution to these impacts would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.G-1—Soil and Groundwater Management Plan* would reduce potential impacts related to exposure of hazardous materials during construction. Therefore, the Program's contribution to this cumulative impact would not be cumulatively considerable, and would be less than significant. Implementation of soil and groundwater management plan mitigation measures in the program vicinity by the other related projects would further reduce the magnitude of impacts. In addition, implementation of *Mitigation Measure 5.L-1—Traffic Control Plan,* which would require coordination amongst various construction contractors for projects in the same vicinity as the Program, would reduce the Program's contribution to the cumulative impacts related to impairment of an emergency response plan or emergency evacuation plan to less than significant.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.G-1 and 5.L-1 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to hazards and hazardous materials impacts would not be cumulatively considerable and would be less than significant.

Noise

5.J: Cumulative increases in construction noise in the program area and along construction haul and delivery routes.

Impact

The geographic scope of potential cumulative noise impacts encompasses the program area as well as areas adjacent to construction access and haul routes that are located near noise-sensitive land uses. The SCVWD Stream Maintenance Program and the BART Berryessa Extension Project would be located in the immediate vicinity of the Program. The

SCVWD Raw and Treated Water Pipelines Rehabilitation Project would be under construction at the same time as the Program and haul routes could overlap. Construction activities within the program area would contribute to the noise environment. Since noise impacts are local in nature affecting only the receptors in the immediate vicinity, and since construction of the Program would occur in a linear fashion, it can be assumed that no individual receptor would be exposed to excessive noise levels from construction for an extended period of time. Implementation of District BMPs NO-1 and NO-2 would minimize noise impacts associated with construction activities; however, residual noise levels would be significant. Noise impacts from SCVWD Stream Maintenance Program the BART project would also be significant given the magnitude of the projects. Therefore, the Program's contribution to cumulative noise impacts would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.J-1a—Noise Control Techniques*, *Mitigation Measure 5.J-1b-Minimize Noise from Impact Equipment*, *Mitigation Measure 5.J-1c—Minimize Noise from Stationary Sources*, and *Mitigation Measure 5.J-1d—Tularcitos Creek Noise Study* would reduce Program noise impacts to a less-than-significant level and would ensure that the Program's contribution to the cumulative increase in the noise environment would not be cumulatively considerable and would be less than significant. Implementation of noise control mitigation measures by other related projects in the Program vicinity would further reduce the magnitude of this impact.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.J-1a through 5.J-1d are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to noise impacts would not be cumulatively considerable and would be less than significant.

Recreation

5.K: Cumulative effects on recreational resources during construction.

Impact

The geographic scope of potential cumulative recreation impacts encompasses the program area as well as park and recreational facilities, including bicycle routes, in the immediate program vicinity. Tree removal is proposed to occur along reaches E, F, and G of the Lower Berryessa Creek Element and along the Lower Penintencia Creek Element. Since trees are a major contributing factor to the scenic quality of the creek corridor in an area used by recreationalists along the pedestrian path, removal of these trees would cause a significant change to the character of the recreation resources and results in a significant impact. The joint USACE/SCVWD Upper Berryessa Creek Project is also a flood control project and would likely have similar recreation resources impacts as the proposed Program, such as tree removal effects on the character of recreation resources. Therefore, the Program's contribution to cumulative adverse changes in the character of recreation resources would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.C-3a—Tree and Shrub Replacement* would ensure that permanent significant recreation resources impacts do not occur as a result of Program implementation. Therefore, the Program's contribution to this cumulative impact would not be considerable with Program mitigation and would be less than significant. Implementation of tree replacement mitigation measures along Berryessa Creek by other related projects would further reduce the magnitude of this impact.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measure 5.C-3a is feasible and will adopt it as described in the EIR. This measure will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With this measure in place, the Program's contribution to recreation resources impacts would not be cumulatively considerable and would be less than significant.

Transportation and Traffic

5.L: Cumulative traffic increases on local and regional roads.

Impact

The geographic scope of potential cumulative impacts related to transportation and traffic includes regional facilities (e.g., highways and freeways) and local roads providing access to the program vicinity. Traffic-related impacts resulting from the Program would be restricted to the construction phase. Increases in traffic and traffic hazards would occur as a result of use of large trucks for the delivery of equipment and materials, and hauling of materials from the program area. If the Program and other projects in the vicinity were under construction at the same time and affected the same roadways, significant cumulative impacts related to increased traffic levels and traffic hazards could result. The SCVWD Raw and Treated Water Pipelines Rehabilitation Project, SCVWD Stream Maintenance Program, and the BART Berryessa Extension Project, would result in construction schedule overlap with the Program. Therefore, the Program's contribution to cumulative construction traffic impacts would be cumulatively considerable and significant. Additional short-term conflicts with local plans and policies related to the City's transportation and circulation system would include temporary transit service delays, conflicts related to the provision of bicycle access as a result of increased construction vehicles on local roadways. Implementation of District BMP TR-1 (Traffic Safety Measures) would minimize potential conflicts with local plans and polices regarding traffic safety. The Program's contribution to cumulative conflicts with local plans and policies regarding transportation and circulation would be significant.

The SCVWD Raw and Treated Water Pipelines Rehabilitation Project, SCVWD Stream Maintenance Program, and BART Berryessa Extension Project overlap geographically with the Program and could temporarily exceed LOS goals established by both the Santa Clara Congestion Management Program and the City of Milpitas due to short-term increases in vehicle trips by construction workers and construction vehicles. Cumulative impacts related to conflicts with local plans and policies regarding transportation and circulation could be significant. Therefore, the Program's contribution to these impacts would be cumulatively considerable and significant.

The Program could result in increased construction-related traffic safety hazards especially in the vicinity of schools including Milpitas High School and Thomas Russell Middle School. The Program could also result in increased road safety hazards due to wear-and-tear of local roadways used by construction vehicles. The SCVWD Stream Maintenance Program and BART Berryessa Extension Project would require the use of trucks for the delivery of equipment to the project sites and off-hauling of materials from the project sites within the vicinity of the Program. Significant cumulative impacts associated with wear-and-tear on designated haul routes could cause increased traffic safety hazards for drivers and cyclists. Therefore the Program's contribution to cumulative temporary safety hazards would be cumulatively considerable and significant.

The presence of construction vehicles and construction equipment on local roadways could result in increased traffic congestion and could temporarily impede emergency access, a significant impact. The SCVWD Raw and Treated Water Pipelines Rehabilitation Project, SCVWD Stream Maintenance Program, and BART Berryessa Extension Project geographically overlap with the Program and could result in lane closures and/or increase traffic congestion, resulting in a significant cumulative impact. Therefore, the Program's contribution to this impact would be cumulatively considerable and significant.

Mitigation

Implementation of *Mitigation Measure 5.L-1—Traffic Control Plan* would require the District to coordinate with the City of Milpitas and other agencies responsible for reviewing and/or approving the construction of other identified development projects to minimize traffic impacts on local access roads. With mitigation, the Program's contribution to this cumulative impact related to temporary reductions in roadway capacities would not be cumulatively considerable and would be less than significant. Implementation of coordinated traffic control plan mitigation measures by other related projects would further reduce the magnitude of this impact.

Implementation of Mitigation Measure 5.L-1 would also minimize cumulative conflicts with local plans and policies regarding transportation and circulation. With mitigation, the Program's contribution to this cumulative impact related to conflicts with local plans and policies would not be cumulatively considerable and would be less than significant. Implementation of coordinated traffic control plan mitigation measures by other related projects would further reduce the magnitude of this impact.

Furthermore, implementation of *Mitigation Measure 5.L-2—Road Repair*, which would establish requirements for restoring roads damaged by construction, would reduce potential Program impacts to a less-than-significant level. With mitigation, the Program's contribution to this cumulative impact related to temporary traffic safety hazards would not be cumulatively considerable and would be less than significant. Implementation of similar road repair measures by other related projects would further reduce the magnitude of this impact.

Implementation of Mitigation Measure 5.L-1 would require coordination with the City of Milpitas and other agencies responsible for reviewing and/or approving the construction of other identified development projects to minimize impaired access. With mitigation, the Program's contribution to this cumulative impact related to impaired access for emergency service providers would not be cumulatively considerable and would be less than significant. Implementation of coordinated traffic control plan mitigation measures by other related projects would further reduce the magnitude of this impact.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.L-1 through 5.L-2 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to transportation and traffic impacts would not be cumulatively considerable and would be less than significant.

Utilities and Service Systems

5.M: Cumulative impacts related to disruption of utilities and service or relocation of utilities.

Impact

The geographic scope of potential impacts on utilities and service systems is limited to the immediate program vicinity where services could be disrupted and/or where utilities could require relocation. For landfill capacity, the geographic scope includes the service areas where disposal of construction-related waste could occur. For compliance with solid waste statutes and regulations, the geographic area encompasses the City of Milpitas. The Program would generate at least 418,200 cubic yards of construction waste. The exact facility that would receive project construction waste is unknown but if all materials from the Program were to be deposited at the Zanker Material Processing Facility or the Zanker Road Resource Recovery Operations Landfill it would significantly reduce the capacity of these facilities and result in a significant impact. While other regional landfills have sufficient capacity to support the cumulative projects, if materials from SCVWD Stream Maintenance Program and the BART Berryessa Extension Project were to be deposited at Zanker Material Processing Facility or the Zanker Road Resource Recovery Operations Landfill a significant cumulative impact related to reduction in landfill capacity could occur. Therefore, the Program's contribution to cumulative landfill capacity impacts would be cumulatively considerable and significant.

The Program and all of the projects in the geographic scope would generate waste that requires offsite disposal and could contribute to a significant cumulative impact related to compliance with solid waste statutes and regulations if they did not include waste diversion measures in accordance to Assembly Bill 939 or the City of Milpitas General Plan (or other jurisdiction, if applicable). Therefore, the Program's contribution to this impact would be cumulatively considerable and significant.

Construction activities for all of the elements could result in damage to or interference with existing above- and below-ground utilities including, but not limited to, water supply, natural gas, oil, telecommunications, cable (fiber optic), electrical, sanitary sewer, and storm drainage lines. Without protection or relocation, these facilities could be damaged, resulting in safety hazards and/or disruption of utility service, a significant impact. The SCVWD Stream Maintenance Program includes ongoing maintenance activities including sediment and vegetation removal within the District's streams and would not likely result in significant disruption of utilities. However, the Berryessa Extension Project would also entail construction activities that could result in disruption of utilities. Therefore, the Program's contribution to cumulative utility disruption impacts would be cumulatively considerable and significant

Mitigation

Implementation of *Mitigation Measure 5.M-1—Appropriate Landfill Use* would ensure that construction waste generated by the Program does not significantly reduce the capacity of local landfills by prohibiting exclusive use of Zanker Material Processing Facility or the Zanker Road Resource Recovery Operations Landfill. Therefore, the Program's contribution to cumulative landfill capacity impacts would not be cumulatively considerable and would be less than significant. Implementation of similar landfill use mitigation measures by other related projects would further reduce the magnitude of this impact.

The Program and all cumulative projects would be required to implement source reduction, recycling, and composting measures as mandated by Assembly Bill 939 and specified in the City of Milpitas General Plan. Specific program compliance would be ensured through implementation of *Mitigation Measure 5.M-3—Waste Management Plan*, which requires the implementation of measures to reduce the amount of waste disposed in landfills. Implementation of this measure would ensure that the Program's contribution to this cumulative impact would not be considerable and would be less than significant. Implementation of waste management plan mitigation measures by the other related projects would further reduce the magnitude of this impact.

Implementation of *Mitigation Measure 5.M-2a—Preconstruction Utility Identification and Coordination*, *Mitigation Measure 5.M-2b—Protection of Other Utilities During Construction*, *Mitigation Measure 5.M-2c—Advance Notification*, *Mitigation Measure 5.M-2d—Emergency Response Plan and Notifications*, which require utility-locating safety practices prior to and during construction, would reduce the Program's impacts to a less-than-significant level. Implementation of these measures would ensure that the Program's impact on utility disruption would not be cumulatively considerable and would be a less than significant impact. Implementation of similar mitigation measures by the other related projects would further reduce the magnitude of this impact.

Finding

Changes or alterations have been required in, or incorporated into, the Program which mitigate or avoid the significant effects on the environment. The Board finds that Mitigation Measures 5.M-1 through 5.M-3 are feasible and will adopt them as described in the EIR. These measures will be incorporated into the Program construction documents (plans and specifications) to ensure their implementation. With these measures in place, the Program's contribution to utilities and service systems impacts would not be cumulatively considerable and would be less than significant.

V. Findings on Program Alternatives

Public Resources Code § 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives…which would substantially lessen the significant environmental effects of such projects."

CEQA requires EIRs to evaluate a reasonable range of alternatives to the proposed program, focusing on alternatives that appear to be feasible, would meet the program objectives, and would avoid or substantially lessen at least one of the proposed program's significant environmental effects. EIRs must also analyze the No Project Alternative. The Draft EIR analyzed four alternatives, including the No Project alternative, to the Program as proposed (see Table 1 below).

Findings Regarding the Alternatives

The Board finds that the EIR describes a reasonable range of alternatives and that it adequately evaluates the comparative merits of the alternatives. As discussed in Section 4.C, Comparison of Alternatives, of the EIR, the Program is considered to be the environmentally superior alternative. Alternative 1, in the probably event of flooding, would result in more severe impacts related to aesthetics, cultural resources, hazards and hazardous materials, hydrology and water quality, geology and soils, land use, noise, recreation, traffic and transportation, and utilities and services systems when compared to the Program. Compared to Alternative 2, the Program has a smaller construction area and timeframe and is able to meet the Program objectives. Alternatives 3 and 4, while meeting the Program objectives, results in slightly greater impacts associated with aesthetics, biological resources, and

TABLE 1
ALTERNATIVES TO PROGRAM AS PROPOSED

Alternative	Elements
1 (No Project)	• No flood control improvements would be constructed • Ongoing maintenance would occur but may be impaired in some locations • Occasional flooding would require emergency repairs and sediment removal
2 (Managed Floodplain)	• A widened floodplain is created in Lower Berryessa Creek only • Levee banks would be set back and the width of the existing channel would increase to 250 feet for approximately 8,700 linear feet of Lower Berryessa Creek. • A new floodplain would be constructed upstream of Lower Berryessa • Two 18-foot wide access roads would be constructed on each side of the new channel • Acquisition of 100 homes and four commercial properties to provide a floodplain of sufficient width
3 (Raised Levees Outside Right of Way and Sediment Removal)	• Levees would be raised outside of the District’s existing ROW • Levee banks would be raised approximately one to five feet • Channels would be widened by approximately 10 feet • Sediment and vegetation removal from Lower Penitencia Creek
4 (Floodwalls and Sediment Removal)	• New floodwalls along Lower Berryessa, Calera, and Tularcitos creeks, ranging in height approximately from one to four feet • Installation of an 18-foot wide maintenance road on both sides of the channels • Sediment and vegetation removal from Lower Penitencia Creek

recreation. When compared to Alternatives 3 and 4, the Program has fewer overall environmental impacts while meeting all Program objectives. In the absence of flooding, the No Project Alternative would avoid most of the significant impacts identified for the Program. However, in the probable event of flooding, the No Project Alternative would result in deposition of large amounts of sediment and debris throughout the flood zone requiring excavation and repair. These activities could result in similar construction phase impacts as the Program. In addition, the No Project Alternative would not accomplish the Program’s identified objectives, and would be inconsistent with the District’s mandated responsibility to provide flood protection. As such, it cannot effectively substitute for the Program, and is rejected.

VI. Absence of Significant New Information

The changes and new information provided in the Final EIR consist of

- Clarifications to the Draft EIR analysis in response to comments received,
- Minor revisions to mitigation measures in response to comments received, and
- Corrections of typographic and editorial errors.

The Board finds that the new information added to the Final EIR merely clarifies, amplifies, or makes insignificant modifications in an adequate EIR and that the information is not “significant” within the meaning of CEQA Guidelines Section 15088.5 because it does not include identification of new or worsened significant impacts associated with the Program or mitigation measures, or new potentially feasible Program alternatives or mitigation measures considerably different from others previously analyzed that warrant consideration. The Board further finds that incorporating the new information and corrections does not deprive the public of a meaningful opportunity to comment on the Program or its effects, and that no information has been added to the Final EIR that would warrant recirculation pursuant to Public Resources Code Section 21092.1. This finding is based upon all the information presented in the Final EIR and the record of proceedings.

VII. Mitigation, Monitoring, and Reporting Plan

As part of the accompanying resolution, the Board is also approving a Mitigation, Monitoring, and Reporting Plan (MMRP) pursuant to Public Resources Code Section 21081.6. The MMRP, which is attached and is incorporated herein by this reference, is designed to enable, ensure, and document compliance with the mitigation measures imposed to avoid or substantially lessen the Program's environmental impacts as documented in the EIR.

VIII. Statement of Overriding Considerations

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project, and if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable (CEQA Guidelines § 15093). An agency may adopt a statement of overriding considerations as a means to approve a project with unmitigated significant environmental impacts. This Statement of Overriding Considerations describes the anticipated benefits or other considerations of the Program to support the decision to proceed with the Program even though not all of the identified impacts would be mitigated to a less than significant level.

The Board's Ends Policy No. E-3, adopted December 21, 2004 and most recently revised December 15, 2009, articulates the District's responsibility to provide "… a healthy and safe environment for residents, businesses and visitors, as well as for future generations." This includes adoption of the following goal and associated objectives.

> Flood Protection Goal 3.2—Reduced potential for flood damages
>
> Flood Protection Objective 3.2.1—Reduce flood risks in flood prone areas
>
> Flood Protection Objective 3.2.2—Avoid the creation of expanded flood prone areas

Protection from the 100-year flood ("1% flood protection") is the currently accepted standard for flood protection works, and the Program is being designed specifically to meet a goal of providing 1% flood protection, with adequate freeboard, for residents and businesses along the Program's creek corridors. Its specific objectives include the following:

- Provide flood protection for the design flow;
- Improve access for long term channel maintenance;

- Incorporate opportunities to integrate levees with the City of Milpitas' trail system;
- Identify opportunities for riparian and stream habitat enhancement and/or restoration; and
- Complete Program construction of the two project-level elements prior to completion of construction of the potential, future, joint USACE/SCVWD Upper Berryessa Creek Project.

Construction of the Program as proposed would likely result in significant and unavoidable effects on air quality associated with emissions of NOx and $PM_{2.5}$ during construction. The District has committed to all feasible mitigation to reduce these impacts, but the residual level of effect is still likely to be significant, and no additional feasible mitigation is available.

Implementation of the Program as proposed would substantially reduce existing unacceptable flood risks along the Lower Berryessa Creek, Calera Creek, Tularcitos Creek, and Lower Penitencia Creek corridors. Currently, more than 3,400 homes and businesses throughout Milpitas are at risk from the 1% flood. The Program would provide 1% flood protection for properties in the vicinity of the Program areas of Lower Berryessa Creek, Calera Creek, Tularcitos Creek, and Lower Penintencia, and would maintain transportation corridors and hospital, school, and park access.

In consideration of the existing flood risks associated with aging and inadequate flood protection infrastructure on Program creeks, and the analysis of Program outcomes presented in the Final EIR, the Board finds that the economic, social, and environmental benefits of meeting the Program's flood protection goal and objectives outweigh the significant and unavoidable air quality and cumulative air quality impacts associated with the Program's construction.

IX. References Cited

Parikh Consultants, Inc., 2004 Geotechnical Office Report: Coyote and Berryessa Creek General Re-Evaluation Study for Proposed Project Modifications, Santa Clara County, California, Job No. 200145.10, April 2004.